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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

MARVIN CLAY,

Defendant and Appellant.

2d Crim. No. B213905
(Super. Ct. No. TA082547)
(Los Angeles County)

Marvin Clay was convicted by jury of robbery. (Pen. Code, § 211) The jury found true an allegation that he personally used a firearm. (§ 12022.53, subd. (b).) The trial court sentenced Clay to 13 years in state prison. In his second appeal, Clay contends that the trial court abused its discretion when it refused on remand to disclose officer personnel records after an *in camera* review. (Evid. Code, § 1045; *Pitchess v. Superior Court* (1974) 11 Cal.3d 531, *Pitchess*.) We affirm because the records contained no information which could lead to admissible evidence helpful to Clay's defense.

FACTUAL AND PROCEDURAL BACKGROUND

Clay and his co-defendant were charged with robbery. Eyewitness identification was buttressed by the statements of two Los Angeles Sheriff's Deputies,

Rojas and Maldonado, that they had seen Clay and his co-defendant in and near the getaway car on the day of the robbery.

Before trial, Clay moved for discovery of any citizen complaints against Deputies Rojas and Maldonado concerning false arrest, planting evidence, fabrication or false testimony. In support of the motion, defense counsel declared that Clay was never in the car and gave a detailed account of Clay's whereabouts that day. The trial court summarily denied the motion without reviewing the records. A jury convicted Clay and his co-defendant.

Clay appealed from the summary denial of his *Pitchess* motion. We conditionally reversed the judgment with directions to review the requested documents in chambers on remand (*People v. Gaines* (2009) 46 Cal.4th 172, 180), because Clay had demonstrated good cause for *in camera* review of the records when his attorney articulated a plausible factual scenario for his allegation that the deputies' reports were false. (*People v. Clay* (Feb. 8, 2008, B193986) [nonpub.opn.].)

On remand, the trial court reviewed the records of Rojas and Maldonado in chambers. It found no information relevant to Clay's defense and reinstated the judgment. Clay filed this appeal.

DISCUSSION

Clay is entitled to appeal the trial court's *Pitchess* ruling following remand. (*People v. Gaines, supra*, 46 Cal.4th at p. 181, fn. 3.) We review the ruling for abuse of discretion. (*People v. Hughes* (2002) 27 Cal.4th 287, 330.)

Clay was entitled to any information relevant to his fabrication defense, provided that the information did not concern conduct that occurred more than five years before the charged crime, conclusions of an officer investigating a complaint, or facts that were "so remote as to make disclosure of little or no practical benefit." (*Evid. Code*, § 1045, subd. (b)(3).) We have independently examined the sealed transcript of the *in camera* hearing, in which the trial court made a clear record of the records reviewed. (*People v. Mooc* (2001) 26 Cal.4th 1216, 1229.) None of the records were relevant to the issues raised by Clay: false arrest, planting evidence, fabrication or false testimony. The

trial court did not abuse its discretion in refusing to disclose the contents of either officer's personnel files.

DISPOSITION

The judgment is affirmed.

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COFFEE, J.

We concur:

GILBERT, P.J.

PERREN, J.

Paul A. Bacigalupo, Judge
Superior Court County of Los Angeles

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